

Exhibit No. 5
Date 1/23/09
Bill No. SB 239

MT COMMON CAUSE

Common Cause works to strengthen public participation and faith in our institutions of self-government; to ensure that government and political processes serve the general interest, rather than special interests; to curb the excessive influence of money on government decisions and elections; to promote fair elections and high ethical standards for government officials; and to protect the civil rights and civil liberties of all Americans.

To the Senate State Administration Committee

January 23, 2009

Re: SB 239

Position: Informational

During the 2007 legislative session, MT Common Cause was active in the passing of SB 91 sponsored by Senator Williams. This legislation created legitimate constituency accounts. The Commissioner of Political Practices has ruled that the Williams legislation does not cover the old-style constituency accounts that existed prior to the legislation. That decision came under the auspices of a campaign finance complaint, not an ethics complaint. The two are different and require different complaints. It is the understanding of MT Common Cause that the creation of the new and legitimate brand of constituency account doesn't change the fact that the old ones were never legit and were in violation of the gift ban, an ethics violation. This understanding is in line with Mr. Unsworth's comments at the April '07 rules hearing for SB 91. There, Mr. Unsworth agreed that the legislation didn't impact the old accounts, but he also disagreed with those who said that donations to those accounts were unregulated. He said that he believed the state's gift ban would restrict many donations to those accounts. So, our position is that just because legitimate constituency accounts were created in SB 91, it doesn't mean the ones that existed before were operating legally. Attempting to make them illegal, as SB 239 does, would be redundant.

Further, we would suggest that if after all the hoopla on this issue during the last session, an elected official didn't run for the safe harbor of the newly created sort of constituency account and instead continued with one of these old accounts, that official is demonstrating some very poor judgment and we would think the proper avenue of redress would be an ethics complaint against that official. An ethics complaint on this issue has not yet been tested.

So our concern with Senator Brown's bill would be that it suggests that these old accounts need to be made illegal rather than acknowledging that they were never legitimate and were an ethics violation from the get-go. We think constituency accounts, properly regulated, can be of value to officials serving their constituents. It would be unfortunate to have to eliminate them completely for everybody if the problem really comes down to some individual's poor judgment.

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